



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,359	06/28/2001	Kurt A. Keil	KK#2-3	2197
7590 04/11/2006				
Arthur R. Eglington, Esq. 113 Cross Creek Dr., R.D. #5 Pottsville, PA 17901		EXAMINER A, PHI DIEU TRAN		
		ART UNIT PAPER NUMBER		
		3637		
DATE MAILED: 04/11/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,359

Applicant(s)

KEIL, KURT A.

Examiner

Phi D. A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8,9,11-17,20 and 23 is/are allowed.
- 6) ☒ Claim(s) 1,4,6,10,18 and 19 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4, 6, 10, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ecket et al (1867449) in view of Daniels (4001993).

Ecket et al shows a rigid member made from sheet metal stock, the member having a pair of externally/internally placed linear groovings (20) along at least one planar surface such that the linear groovings permit separation under force (page 2 lines 19-23).

Ecket et al does not show the rigid member being tubular member.

Daniels shows a tubular member (12).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's structure to show the member being tubular as taught by Daniels because it would provide a stronger brace member.

Per claim 10, Ecket et al as modified shows the member being rectangular cross section, the internal span of the one opposing pair of sidewalls having depending end segments.

Per claim 18, Ecket et al shows all the claimed limitations including the right angle member, and a second member (13).

Ecket et al does not show the second member being a tubular member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's structure to show the second member being tubular as taught by

Art Unit: 3637

Daniels because having the vertical member being tubular would strengthen the structural support of the member.

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ecket et al (1867449) in view of Daniels (4001993) as applied to claim 1 above and further in view of Kolvites et al (5271337).

Ecket et al as modified shows all the claimed limitations except for the material of construction being a thermoplastic resin.

Kolvites et al discloses a supporting beam made of thermoplastic resin.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Ecket et al's modified structures to show the material of construction being a thermoplastic resin because it provides for high torsional strength and impact resistant as taught by Kolvites (col 10 lines 3-17).

Allowable Subject Matter

4. Claims 8-9, 11-17, 20, 23 are allowed.

5. Claims 2-3, 5, 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 1/30/06 to claims 1, 4, 6, 10, 18-19 have been fully considered but they are not persuasive.

7. Applicant states that Ecket's U-shape channel cannot be reformed into a tubular member per Daniel's teaching, examiner respectfully disagrees. Ecket shows a channel brace member

with a first pair of externally placed linear groovings (20) being located in parallel with each of the groovings being located proximal to each of the two seams of a single member sidewall in one planar surface of the member as claimed. The linear groovings (20) is capable of separation under force to form at least an initial finger from one sidewall as shown in the figures 5-6. Ecket does not show the channel member being tubular as claimed. As pointed out in the office action, modifying Ecket's channel to form the channel into a tubular member would enable Ecket's member to become a stronger brace member. the modification is thus encouraged. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Also, the combination does not render the teaching of Ecket inoperable. The combination improves upon Ecket's brace by making Ecket's brace stronger by being tubular. The argument is thus moot.

8. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the references themselves.

9. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on

Art Unit: 3637

obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to applicant's argument that independent claim 1 as amended on page 5, is confusing. There is no amended independent claim 1. Examiner believes this to be an inadvertent error in applicant's remark. The only amended claim with this response of 1/30/06 is to claim 11.

10. With respect to claim 19, as the modification of Ecket in view of Daniel is proper, the combination of Ecket, Daniel, and Kolvite rejecting claim 19, is thus proper. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine is found in the references themselves as combination of Ecket, Daniel, and Kolvites patent would result in a stronger brace that provides for high torsional strength and impact resistant. The argument is thus moot.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Phi Dieu Tran A

PA

4/8/06

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai